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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/675,229   | 09/29/2003  | Takako Fujii         | B-5248 621294-8     | 9863             |
| 36716  | 7590        | 01/25/2006           | EXAMINER            |                  |
| LADAS & PARRY<br>5670 WILSHIRE BOULEVARD, SUITE 2100<br>LOS ANGELES, CA 90036-5679 |             |                      | HILL, LAURA C       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3761                |                  |

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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| APPLICATION NO./<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. <i>e</i> |
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20060113

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

**Office Action Summary**

Application No.

10/675,229

Applicant(s)

FUJII ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. In response to Applicant's arguments that the Examiner is limiting the body fluid impermeable back member as recited in claim 1 to a liquid impermeable back sheet 101 (see Remarks page 11), it is noted that no such limitation has been made but merely the back sheet is one example of meeting the claim limitation and that the claims have been given their broadest reasonable interpretation consistent with the specification as required by MPEP 904.01.
2. It is also noted that in response to Applicant's amended claim 7, the 35 USC 112, second paragraph rejection has been withdrawn.

### ***Allowable Subject Matter***

3. The indicated allowability of claims 8-9 in the previous Office action is withdrawn in view of the newly discovered reference(s) to Fitzgerald (US 4,435,178). Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 9, 12, and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Fitzgerald (US 4,435,178; herein 'Fitzgerald'). Regarding claims 1-4, 6, and 17 Fitzgerald discloses absorbent sanitary napkin 10 having body fluid permeable

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body-side top sheet 34 (column 3, lines 14-18), an absorbent core 12 having an upper layer 14 and lower layer 16 having recesses 18 formed on the body-facing side, compressed grooves/recesses 19 formed on the garment-facing side (column 2, lines 40-68, figure 1), wherein squeeze-out portions are formed on both sides of lower layer 16 in areas outside of recesses 18 (figure 1), wherein the lower layer 16 inherently has a higher density than upper layer 14 and a higher density than the squeeze out portions lying outside recesses since the lower layer contains recesses 18, 19. Fitzgerald further discloses the recesses and compressed portions are desirable to easily receive and prevent the gushes of waste fluid from gushing through the pad, and thus enhancing body fluid distribution (column 2, lines 11-16).

Regarding claims 5 and 7 Fitzgerald discloses a contact point in the body fluid permeable body-side top sheet 34 and a contact point in the absorbent do not have a clearance [There is a contact point of portion of both top sheet and absorbent layers that do not contain a recess.] formed by recesses (figures 2-3).

Regarding claim 9 Fitzgerald discloses a density of the squeeze out portions that would have a greater density than the upper layer density since lower layer 16 contain coatings 17 that would increase the lower layer surface density.

Regarding claims 12 and 14-16 Fitzgerald discloses indented recesses 18, 19 formed in a linear net shape with an angle of less than 45 degrees or formed in diagonal grooves 25 having an angle of greater than 90 degrees (column 2, line 66-column 3, line 4 and figure 7).

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5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (EP 0613671 A2; herein 'Cole'). Cole discloses an absorbent unitary pad 100 comprising an absorbent core 104 sandwiched between a fluid permeable cover layer 110 and impermeable backing material 102 (page 4, lines 50-52, page 6, lines 10-13, figure 1); characterized in that said absorbent 104 includes two-pieces, an upper/top layer 108 and a lower layer 106 sequentially from the side of permeable surface 110 (page 5, lines 10-14, figures 1 and 4); and in that the lower layer 106 has alternating densities with an array of recesses 120 formed by embossing into its body-facing surface for conducting liquid across the surface of the absorbent article (page 5, lines 15-19, lines 42-45) and a squeeze-out portion outside the area containing recesses 120. The lower layer 106 is capable of having a higher density than the upper layer 108 and squeeze-out portion since the lower layer is embossed and therefore compacted and denser. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 10-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald (US 4,435,178; herein 'Fitzgerald'). Fitzgerald does not expressly disclose density values of each layer, embossing mutual distance or emboss percentage. Density of each layer formed by the recesses, embossing mutual distance, and the amount of surface area covered by the embossments are result-effective variables since the density, number of embossments and surface area affect how fluid flows through the article (column 2, lines 61-63). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Fitzgerald with the densities and emboss values claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Karami et al. (US 4,496,358) is cited for showing a disposable diaper 10 having an absorbent pad assembly 16 with lower layer 18 sprayed with a water film so that the density increases in the core as it extends away from the top sheet 12.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

